

REMARKS

Applicants submit these remarks in response to the Office Action dated January 21, 2005. Claims 1, 5-11, 13-16, and 18-30 are pending.

The rejection of claims 1, 5-11, 13-16, 19 and 30 is withdrawn.

The rejection of claims 1, 5, 6 and 8 under 35 U.S.C. § 112, first paragraph is maintained. The Examiner did not specifically address applicants' arguments on this point, submitted in the response filed on December 27, 2004. Without acquiescing to this ground of rejection, applicants submit that the present claims are not subject to the rejection.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over Brzezinski, B., Organic Magnetic Resonance 8:283-286 (1976), Caplus abstract DN86:15920. The disclosed structure in the reference contains an N-oxide at the position *ortho* to the amide, 3-Methyl-1-oxy-pyridine-2-carboxylic acid phenylamide. None of the claimed compounds constitutes structures of that genus. All of the claimed compounds have the substitution pattern wherein the N-oxide is *meta* relative to the amide linkage. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over Brzezinski, B., Roc. Chem. 49:631:633 (1975) Caplus abstract 83:96958. Without acquiescing to the ground of rejection, applicants submit that claim 1 as amended, and the rejected claims that depend from claim 1, are not subject to this ground of rejection. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over Brzezinski, B., J. Mag. Res. 48:361:366 (1982), Caplus abstract 97:144206. The 97:144206 structure discloses the N-oxide group *ortho* relative to the amide linkage. This contrasts with applicants' claimed structures, in which the amide linkage is *meta* to the N-oxide ortho group. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,730,057, which discloses an ether linkage *para* to the N-oxide. Without acquiescing to the ground of rejection, applicants submit that the claims as

amended (R_4 is no longer alkyl or heteroalkyl) are not subject to this rejection.

Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,978,385, which discloses a compound having a halogen *para* to the N-oxide and *ortho* to the amide linkage. Without acquiescing to the ground of rejection, claim 1 has been amended to recite that when R^4 is *para* to the N-oxide, it is not halogen. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,787,931. Applicants submit that the referenced genus of compounds does not constitute prior art. The compounds claimed in the '931 patent refer exclusively to N-oxide *para* to the amide linkage, unlike applicants' claimed compounds wherein N-oxide is *meta* to the amide. Also, in the claims a urea linkage is used instead of an amide linkage, another non-anticipatory difference. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 6, 10, 13, 16, 29 and 30 are rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,794,397. The reference does not teach the synthesis of the N-oxides of the invention as claimed. The reference does teach the synthesis of the corresponding *non-oxidized* form. The referenced patent appears to have no disclosure of N-oxides, either in the description or claims. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 14 and 18-28 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 4,978,385. The reference discloses a halogen in the 4 position of the phenyl ring of the nicotinamide analogue, and the Examiner states that it would be obvious to substitute a "F" at the 4 position of the phenyl to obtain the claimed compounds. Applicants submit that the '385 patent on its own provides no motivation to take the disclosure of a halogen in a certain position of a nicotinamide analogue and apply that to applicants' compounds. The motivation is absent because these two compounds represent non-analogous arts. The '385 patent discloses herbicidal compounds, whereas applicants' claimed compounds are pharmaceutical compounds for medical treatment of mammals, including humans. One of skill in the pharmaceutical arts would

not look to teachings in the art of weed control for ways to modify a compound to administer to humans.

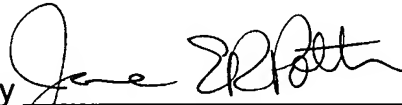
Fungicides for treating plants, and anti-inflammatory agents for treating humans, are non-analogous arts, rendering the '385 patent inapplicable as a reference. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor, or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). Applicants submit that the '385 patent meets neither of these requirements.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Commissioner is hereby authorized to charge the required fees of \$450, to Deposit Account No. 04-0258. If additional fees are believed necessary, the Commissioner is further authorized to charge any deficiency or credit any overpayment to Deposit Account No. 04-0258.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (206) 628-7650.

Respectfully submitted,
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